



**2015 ANNUAL
REPORT TO THE
LEGISLATURE**

**WHISTLEBLOWER
RETALIATION
COMPLAINTS**

Prepared by

State Personnel Board

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**ANNUAL REPORT TO THE GOVERNOR AND THE LEGISLATURE
COMPLAINTS OF RETALIATION FOR THE DISCLOSURE OF INFORMATION BY
PUBLIC EMPLOYEES (WHISTLEBLOWER RETALIATION)**

June 2016

Introduction

Government Code section 19683, subdivision (f) provides, “In order for the Governor and the Legislature to determine the need to continue or modify state personnel procedures as they relate to the investigations of reprisals or retaliation for the disclosure of information by public employees, the State Personnel Board, by June 30 of each year¹, shall submit a report to the Governor and the Legislature regarding complaints filed, hearings held, and legal actions taken pursuant to this section.” This report is prepared by the State Personnel Board (SPB) for the calendar year of January 1, 2015 through December 31, 2015.

Background

Protection for state employees from retaliation for having reported improper governmental activities was first provided in 1985. At that time, the SPB was assigned responsibility for investigation of complaints of whistleblower retaliation.

Amendments to the whistleblower retaliation protections were made in 1987, 2000, 2001, 2004, 2010, 2011, 2012, and 2013. In 2002, SPB adopted regulations to implement the whistleblower retaliation laws.

Effective March 8, 2006, the SPB’s regulations were revised to include the requirement that the Executive Officer refer cases for investigation or schedule an informal hearing before an administrative law judge. Effective August 18, 2010, the SPB’s regulations concerning the whistleblower statutes were revised as part of a broader revision to SPB’s regulations.

Information

Whistleblowing is defined as either disclosing information that an employee or applicant of a state agency, a community college, the California Supreme Court, a court of appeal, a superior court, or the Administrative Office of the Courts, reasonably believes is evidence of an improper governmental activity, or refusing to obey an illegal order or directive.

¹ Six reports were produced between 1987 and 1992. In 1992, Chapter 710 legislation (Government Code section 7550.5) instituted a moratorium on most reports to the Legislature. The moratorium was renewed in 1994 and 1996, and became inoperative on October 1, 1999. After the moratorium was finally repealed as of January 1, 2000, Whistleblower Retaliation Reports have been produced on an annual basis beginning with the calendar year 2000.

Three agencies play major roles in investigating whistleblower retaliation, the California State Auditor (CSA), the Office of the Inspector General (OIG), and the SPB.

CSA accepts complaints in reference to improper governmental activities. CSA is the investigative agency that has jurisdiction to investigate the underlying improper governmental activity.

OIG's specific responsibility in whistleblower retaliation complaints is to investigate complaints of retaliation against those who report misconduct on the part of state correctional agencies and employees. OIG may, with the approval of the complaining employee, forward its investigative findings to the SPB for the purpose of bringing disciplinary action against an employee who is found to have violated the retaliation provisions when the department fails to do so. As an independent agency, OIG reports to the Governor. OIG also provides impartial analysis and policy recommendations to the Governor, the Legislature, and correctional administrators.

SPB is the adjudicatory body that hears and decides whistleblower retaliation complaints filed by state civil service or community college employees; employees of the Supreme Court, Courts of Appeal, Superior Courts, or the Administrative Office of the Courts; or applicants, who have alleged being subjected to an improper personnel action for disclosing improper governmental activity or refusing to obey an illegal order or directive.

The SPB has jurisdiction in whistleblower retaliation cases when all of the requirements listed below are met:

- A state or community college applicant or employee or employee of the Supreme Court, Courts of Appeal, Superior Courts, or the Administrative Office of the Courts files the complaint. "Employee" includes any former employee who met the above criteria during his or her employment.
- The complaint states a prima facie case of retaliation.
- The complaint is filed within one year of the most recent act of reprisal.
- The names and business addresses of each individual and entity alleged to have committed reprisal or retaliatory acts are provided.
- The complainant provides a sworn statement, under penalty of perjury, that the contents of the complaint are true.

SPB does not accept filed complaints when any of the above requirements are not met or the SPB does not have jurisdiction over the employing entity (e.g. University of California, California State University).

Complaint Activity

In calendar year 2015, 53 whistleblower retaliation complaints were filed with the SPB. This is a 14% decrease from 2014, when the SPB received 64 whistleblower

complaints. Of the 53 complaints filed in 2015, 21 of those complaints were accepted. Of the 21 cases accepted, 15 cases were assigned to the Informal Hearing Process. Six matters were assigned for a full Evidentiary Hearing. For those cases assigned to the Informal Hearing Process, one closed case was “granted”, seven were “dismissed” following an informal hearing and the issuance of a Notice of Findings. Of the remaining seven complaints in the Informal Hearing Process, two were withdrawn by the complainant, one settled prior to the issuance of a Notice of Findings, and four remain open. For the six matters assigned for a full evidentiary hearing, two settled before the evidentiary hearing, and four complaints remain open. Detailed information regarding complaint activity is provided below.

SPB Whistleblower Retaliation Complaints Activity Report 2015²

Total Complaints Filed	Complaints Accepted	Complaints Not Accepted³
53	21	32

1. Disposition of Whistleblower Complaints Administered Entirely in the Informal Hearing Process

Granted after Notice of Findings	Dismissed after Notice of Findings	Withdrawn	Stipulated Settlement Before Notice of Findings	Open Complaints
1	7	2	1	4

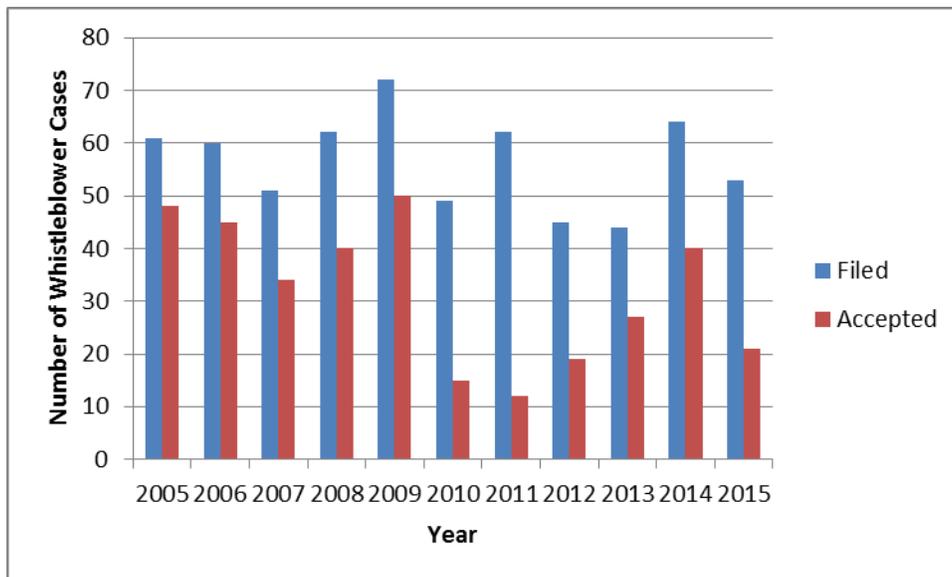
² Status as of April 11, 2016.

³ SPB does not accept filed appeals when: (a) The complaint fails to state a prima facie case of retaliation; (b) the complaint is not filed within one year of the most recent act of reprisal; (c) the complaint is not signed under penalty of perjury; or (d) the SPB does not have jurisdiction over the employing entity (e.g. University of California, California State University).

2. Disposition of Whistleblower Complaints Removed to the Evidentiary Hearing Process

Granted after Evidentiary Hearing	Dismissed after Evidentiary Hearing	Withdrawn	Stipulated Settlement Before Evidentiary Hearing	Open Complaints
0	0	0	2	4

Comparison of Whistleblower Appeals filed each Year



**Detailed Listing – Whistleblower Retaliation Complaints
Filed with SPB
Calendar Year 2015**

	Number	Appeal Date	Case Status	Department	Consolidated⁴	RDAT⁵	Informal/Evidentiary Hearing
1	15-0013W	1/7/15	Closed – No Prima Facie Case	Forestry and Fire Protection	N/A	Yes	N/A
2	15-0049W	1/7/15	Closed – No Prima Facie Case	Corrections and Rehabilitation	N/A	Yes	N/A
3	15-0055W	1/13/15	Closed – Complaint Withdrawn by Complainant	General Services-Human Resources	N/A	Yes	N/A
4	15-0056W	1/14/15	Closed – Notice of Findings (Dismissed)	Transportation	N/A	Yes	Informal
5	15-0077WEK	1/16/15	Closed - Stipulated Settlement Prior to Evidentiary Hearing	State Controller's Office	15-0074K (AA)	Yes	N/A
6	15-0109W	1/21/15	Closed – No Prima Facie Case	Forestry and Fire Protection	N/A	No	N/A
7	15-0097W	1/22/15	Closed – Notice of Findings (Dismissed)	Transportation	N/A	Yes	Informal
8	15-0162W	2/3/15	Closed – No Prima Facie Case	Corrections and Rehabilitation	N/A	No	N/A
9	15-0245W	2/13/15	Closed – Notice of Findings (Dismissed)	Corrections and Rehabilitation	N/A	No	Informal

⁴ AA: Whistleblower Retaliation Complaint consolidated with prior Adverse Action appeal.
DC: Whistleblower Retaliation Complaint consolidated with prior Discrimination Complaint.
E: Converted to formal evidentiary hearing.
WB: Whistleblower Retaliation Complaint consolidated with other Whistleblower Retaliation Complaint.

⁵ RDAT: indicates whether complainant requested disciplinary action be taken.

**Detailed Listing – Whistleblower Retaliation Complaints
Filed with SPB
Calendar Year 2015**

	Number	Appeal Date	Case Status	Department	Consolidated⁴	RDAT⁵	Informal/Evidentiary Hearing
10	15-0349W	3/5/15	Closed – Notice of Findings (Granted)	Child Support Services	N/A	Yes	Informal
11	15-0365WE	3/9/15	Open	Corrections and Rehabilitation	15-0355N	Yes	Evidentiary (Pending)
12	15-0366WK	3/9/15	Closed – Notice of Findings (Dismissed)	State Hospitals - Legal	14-2167WK (AA)	Yes	Informal
13	15-0411W	3/16/15	Closed – No Prima Facie Case	Transportation	N/A	Yes	N/A
14	15-0459W	3/23/15	Closed – No Prima Facie Case	Developmental Services	N/A	No	N/A
15	15-0481W	3/26/15	Closed – Notice of Findings (Dismissed)	Technology	N/A	Yes	Informal
16	15-0673W	4/20/15	Closed – No Prima Facie Case	FISCAl	N/A	No	N/A
17	15-0719W	5/1/15	Closed – No Prima Facie Case	Transportation	N/A	Yes	N/A
18	15-0720W	5/4/15	Closed – No Prima Facie Case	Transportation	N/A	Yes	N/A
19	15-0763W	5/6/15	Closed – No Prima Facie Case	Corrections and Rehabilitation, CA Institution for Women	N/A	No	N/A
20	15-0788W	5/14/15	Closed – No Prima Facie Case	Unemployment Insurance Appeals Board	N/A	Yes	N/A

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	Number	Appeal Date	Case Status	Department	Consolidated⁴	RDAT⁵	Informal/Evidentiary Hearing
21	15-0848W	5/20/15	Closed – No Prima Facie Case	Social Services	N/A	No	N/A
22	15-0954W	6/10/15	Closed – No Prima Facie Case	State Hospitals	N/A	Yes	N/A
23	15-0958W	6/11/15	Closed – No Prima Facie Case	Energy Commission	N/A	No	N/A
24	15-0968W	6/15/15	Closed – No Prima Facie Case	State Compensation Insurance Fund	N/A	Yes	N/A
25	15-1041W	6/25/15	Closed – No Prima Facie Case	Transportation	N/A	Yes	N/A
26	15-1106W	7/7/15	Closed – No Prima Facie Case	Corrections and Rehabilitation, CA Health Care Facility	N/A	Yes	N/A
27	15-1121W	7/7/15	Closed – No Prima Facie Case	CA Correctional Health Care Services	N/A	Yes	N/A
28	15-0349WE	7/8/15	Closed - Stipulated Settlement after Notice of Findings	Child Support Services	N/A	Yes	Informal
29	15-1135W	7/9/15	Closed – Stipulated Settlement Prior to Notice of Findings	Transportation	N/A	No	N/A
30	15-1138W	7/10/15	Closed – Lack of Prosecution	Corrections and Rehabilitation, CA Institution for Women	N/A	Yes	N/A
31	15-1312W	7/31/15	Closed – No Prima Facie Case	CA Correctional Health Care Services	N/A	Yes	N/A

**Detailed Listing – Whistleblower Retaliation Complaints
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	Number	Appeal Date	Case Status	Department	Consolidated⁴	RDAT⁵	Informal/Evidentiary Hearing
32	14-1586WE	8/4/15	Open - Notice of Findings (Granted)	CA Correctional Health Care Services	N/A	Yes	Informal/Evidentiary (Pending)
33	15-1353W	8/7/15	Closed – No Prima Facie Case	Motor Vehicles	N/A	No	N/A
34	15-1330W	8/10/15	Closed – Notice of Findings (Dismissed)	State Compensation Insurance Fund	15-0968W (AA)	Yes	Informal
35	15-1385W	8/18/15	Closed – No Prima Facie Case	Community College, San Bernardino District	N/A	Yes	N/A
36	15-1410WEK	8/21/15	Open	CalOES	15-0876E (E)	No	Evidentiary
37	15-1428W	8/21/15	Closed – No Prima Facie Case	Corrections and Rehabilitation, CSP-Sacramento	N/A	No	N/A
38	15-1434W	8/24/15	Open	Public Health	N/A	Yes	N/A
39	15-1472W	8/28/15	Closed – No Prima Facie Case	Highway Patrol	N/A	No	N/A
40	15-1513W	9/4/15	Closed – No Prima Facie Case	Parks and Recreation	N/A	No	N/A
41	15-1516W	9/4/15	Closed – Inadequate Affirmation	Social Services	N/A	No	N/A
42	15-1610W	9/10/15	Closed – No Prima Facie Case	Transportation	N/A	No	N/A

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	Number	Appeal Date	Case Status	Department	Consolidated⁴	RDAT⁵	Informal/Evidentiary Hearing
43	15-1556W	9/11/15	Closed – Notice of Findings (Dismissed)	Agricultural Labor Relations Board - Legal	N/A	Yes	N/A
44	15-1627W	9/22/15	Closed – No Prima Facie Case	Developmental Services	N/A	No	N/A
45	15-1712WEK	10/5/15	Open	CA Correctional Health Care Services	15-2142E (E)	No	N/A
46	15-1794W	10/9/15	Closed – No Prima Facie Case	Housing and Community Development	N/A	Yes	N/A
47	15-1887W	10/21/15	Closed – No Prima Facie Case	Employment Development - Human Resources Services Division	N/A	No	N/A
48	15-1939W	10/29/15	Closed – No Prima Facie Case	Corrections/EAPT	N/A	No	N/A
49	15-2019W	11/16/15	Closed – Failure to Comply with Regulations	CA Correctional Health Care Services	N/A	No	N/A
50	15-2035W	11/16/15	Closed – No Prima Facie Case	Community College, Napa Valley	N/A	Yes	N/A
51	15-2087W	11/27/15	Closed – Withdrawn by Appellant	Unemployment Insurance Appeals Board	N/A	No	N/A
52	15-2181W	12/15/15	Open	Corrections and Rehabilitation, Pelican Bay State Prison	15-1639E (E)	Yes	N/A
53	15-2206W	12/18/15	Closed – No Prima Facie Case	Transportation	N/A	Yes	N/A

**Detailed Listing – Whistleblower Retaliation Complaints
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Calendar Year 2015**

2014 Whistleblower Retaliation Complaints Carried Over To Calendar Year 2015

	Number	Appeal Date	Case Status	Department	Consolidated³	RDAT⁴	Informal/Evidentiary Hearing
1	14-1191WEK	7/1/14	Closed – Notice of Findings (Dismissed)	Corrections and Rehabilitation	14-1211 and 14-1209 (AA)	Yes	Evidentiary
2	14-1277WEK	7/11/14	Closed – Notice of Findings (Dismissed)	Corrections and Rehabilitation	14-0721 (AA)	Yes	Evidentiary
3	14-1284WEK	7/18/14	Closed - Stipulated Settlement	Transportation	14-1537	Yes	Evidentiary
4	14-1586W	9/10/14	Closed – Notice of Findings (Dismissed)	CA Correctional Health Care Services	N/A	Yes	Informal
5	14-1693W	9/25/14	Closed – Notice of Findings (Dismissed)	Corrections and Rehabilitation	N/A	Yes	Informal
6	14-1813W	10/26/14	Closed – Withdrawn by Appellant	Fair Employment and Housing	N/A	Yes	Informal
7	14-1948W	11/3/14	Closed – Withdrawn by Appellant	Developmental Services	N/A	Yes	Informal
8	14-2085W	11/24/14	Closed – Withdrawn by Appellant	Industrial Relations	N/A	No	Informal
9	14-2294WK	12/31/14	Closed – Notice of Findings (Dismissed)	Developmental Services	14-2295WK	Yes	Informal
10	14-2295WK	12/31/14	Closed – Notice of Findings (Dismissed)	Developmental Services	14-2294WK	Yes	Informal

**Detailed Listing – Whistleblower Retaliation Complaints
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2013 Whistleblower Retaliation Complaints Carried Over to Calendar Year 2015

	Number	Appeal Date	Case Status	Department	Consolidated³	RDAT⁴	Informal/Evidentiary Hearing
1	13-0799WEK	11/20/2013	Closed – Notice of Findings (Dismissed)	State Hospitals	13-0991WEK	Yes	Evidentiary
2	13-0991WEK	11/20/2013	Closed – Notice of Findings (Dismissed)	State Hospitals	13-0799WEK	Yes	Evidentiary